

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.1.2002

CORAM:

THE HONOURABLE MR.JUSTICE K.GNANAPRAKASAM

CRP.NO.1203 OF 2001

Bhuvaneswari ..Petitioner

vs.

R.Elumalai ..Respondent

! For Petitioner: Mr. P. Seshadri

^ For Respondent: Mr.K.S.V.Sadhasivam

: O R D E R

Petition filed under section 115 CPC against the judgement and decree dated 27.9.2000 made in I.A.No.675 of 1998 in O.S.No. Nil of 1997 on the file of the Principal District Munsiff, Arni. ORDER

1.The revision petitioner is the plaintiff in an unnumbered OS of 199 7 on the file of the District Munsif, Arni.

2.The plaintiff filed the suit for recovery of the amount due under a promissory note. The plaint was returned and the same was represented after 457 days. An application was filed on behalf of the plaintiff to condone the delay and the same was dismissed by the trial court by the order dated 27.9.2000. Aggrieved by the same, the plaintiff has preferred this revision petition.

3.The plaintiff, in the affidavit filed in support of the petition, has stated that the plaint was returned and the same was misplaced with the other bundles and only in the said circumstances, the same could not be represented in time and the same was represented after 457 days and the delay in representation of the plaint was not wanton and deliberate.

4.The respondent, in his counter, has stated that the delay cannot be condoned and there was no merit in the petition.

5.The trial court, in its order, had observed that the plaint was filed by affixing court fee to the value of Rs.2/-. The plaint was returned, granting three weeks' time for the

payment of deficit court fees. The plaintiff, after affixing the court fee, represented the plaint on 5.10.1998 and there was a delay of 457 days. The plaint was returned on 9.10.1998 for filing a petition under Section 149 CPC granting 15 days time and as per the court direction, the plaintiff filed a petition under Section 149 CPC to condone the delay of 457 days, within 15 days. The court ordered notice and the defendant also filed his counter and both of them were considered by the court and it was of the view that the petition one under Section 149 CPC was not filed at the time of representation of the plaint and dismissed the petition.

6.The learned advocate for the petitioner has submitted that the plaint was presented with the deficit court fee and the same was returned, granting three weeks' time. The petitioner did not comply with the same. But, however, when the plaint was represented after some time, the entire court fee was paid and the plaint was represented on 9.10.1998. After having received the plaint, the court itself returned the plaint with a direction, directing the plaintiff to file an application under Section 149 CPC granting 15 days time and the same was complied with by the plaintiff within time. As such, the plaintiff has complied with the order of this court. But, however, the delay caused originally in representing the plaint has got to be condoned, for which, the plaintiff had made an application and the same was dismissed. It is submitted that the delay in representation was bona fide and the order passed by the trial court is not proper.

7.The learned advocate for the respondent has submitted that no sufficient reasons were given for the delay in representing the plaint and therefore, argued in support of the order passed by the trial court.

8.It is not in dispute that initially the plaint was presented in time and the same was returned for certain compliance. The plaintiff after complying with the directions of the court, including the payment of deficit court fee, represented the plaint with a petition to condone the delay of 457 days. After representation of the plaint, the court returned the plaint on a particular date granting 15 days time directing the plaintiff to file a petition under Section 149 CPC and the same was complied with by the plaintiff within time. But, however, the application filed by the plaintiff to condone the delay of 457 days in representing the plaint was dismissed.

9.Now the question that has got to be answered by this court is as to whether the order passed by the trial court in dismissing the petition is in order?

10.The plaint, which was returned for certain compliance,

was not represented in time. But, however, the plaint was represented after compliance, along with a petition to condone the delay of 457 days and certain reasons were given for the delay. After representing the plaint, the court once again returned the plaint with a direction to the plaintiff to file an application under Section 149 CPC and the same was complied with by the plaintiff in time. In my view, the same is a proper compliance with Section 149 CPC, which states as follows: "Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fee has not been paid, the Court, may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court fee and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."

11. In our case, the plaint was returned granting three weeks time for the payment of deficit court fees. The plaint was not represented within the given time. But, however, when the plaint was represented, the entire court fee, due was paid and represented. As there was a delay, in representation, an application was filed to condone the delay and it appears that the said application was filed under Section 151 CPC. The trial court has held as under: "In this case the petition under Section 149 CPC has not been filed at the time of representation of the plaint. Neither petition under Section 148 CPC seeking for extension of time in the payment of deficit court fee was filed at the time of representation of the plaint."

12. The trial court approached the petition on two aspects viz. (1) that the petitioner has not chosen to file an application under Section 149 CPC at the time of representation of the plaint seeking the permission of the court to pay the deficit court fees. The said view of the trial court is not correct for the reason that the plaint itself was originally returned for the payment of deficit court fees and at the time when the plaint was represented, the deficit court fees was made good and that therefore, the petition under Section 149 CPC has become unnecessary. But, I am able to see that the court itself returned the plaint for representation for filing an application under Section 149 CPC and the same was also complied with by the plaintiff in time. Therefore, the approach of the trial court that the petitioner has not chosen to file an application under Section 149 CPC does not arise in this case.

13. The 2nd approach of the trial court is that the plaintiff has not chosen to file even an application under Section 148 CPC. Section 148 CPC is an enabling provision available to a party to the suit/ proceedings, to pray for

"enlargement of time fixed by the court." This provision is applicable to both the plaintiff and the defendant or a petitioner or a respondent in a proceedings. In our case, it appears that the plaintiff represented the plaint along with the petition under Section 151 CPC. Section 151 CPC gives inherent power to the court, to make such or suitable orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. When the plaint was returned with a direction to represent the same within a particular time, in my opinion, it is only an administrative order of the court. At that time, the matter was in between the court and the parties concerned.

14. The time granted by the court for the representation of the plaint, is only an administrative order and not a judicial order, and as such, if there is any delay in the representation of the plaint, an application to excuse the said delay could be filed under Section 151 CPC and it need not necessarily be the one under Section 148 CPC. In fact, Section 151 CPC is an omnibus provision available in the code to make suitable orders, which are necessary to meet the ends of justice and therefore, the application, which was filed under Section 151 CPC could have been allowed by the trial court. Even otherwise, the substance of the petition is more important than the form. Mere quoting of the provision wrongly, is not fatal to the petition itself. In that view of the matter also, the trial court could have allowed the said petition in excusing the delay in representation of the plaint. But, however, the court had taken a rigid view that the petitioner ought to have filed the petition either under section 148 CPC or under Section 149 CPC and dismissed the petition. The said view of the trial court is an erroneous one and liable to be set aside. In fact, in this case, the plaint itself has not been admitted and the trial has not been commenced and it would not prejudice the case of the defendant to any extent, and that is also yet another reason, in favour of the petitioner to allow the petition. The defendant has got enough time to put forward his defence in the suit and his right to defend the case would not at all be prejudiced.

15. The learned advocate for the respondent placed reliance upon the case of BUTA SINGH (DEAD) BY LRs VS. UNION OF INDIA (AIR 1995 SC 1945 ). That case arises out of an appeal filed by the claimants under Land Acquisition Proceedings. In the said case, after the arguments were heard and judgement was reserved, certain applications were filed before the pronouncement of the judgement seeking permission to pay more court fees and certain petitions were filed after pronouncement of the judgement seeking permission to pay deficit court fees claiming enhanced compensation. In those contexts and in the circumstances stated in that case, the apex court was of the view that there are no bona fides on the part of the claimants in

coming forward in filing an application under Section 149 CPC for the extension of time for the payment of court fees. In paragraph 9, it is observed as follows: "The aid of Section 149, could be taken only when the party was not able to pay court fee in circumstances beyond his control or under unavoidable circumstances and the court would be justified in an appropriate case to exercise the discretionary power under Section 149, after giving due notice to the affected party. But, that was not the situation in this case. Under the relevant provisions of the Court Fee Act applicable to appeals filed in the High Court of the Punjab & Haryana, the claimants are required to value the appeals in the MOAs and need to pay the required court fee. Thereafter the appeal would be admitted and the notice would go to the respondents. The respondents would be put on notice of the amount, the appellant would be claiming so as to properly canvass the correctness of the claim or entitlement. The claim cannot be kept in uncertainty. If in appeal under Section 54 of the Land Acquisition Act the amount is initially kept low and then depending upon the mood of the appellate court, payment of deficit court fee is sought to be made, it would create unhealthy practice and would become a game of chess and a matter of chance. That practice would not be conducive and proper for orderly conduct of litigation." The facts in the above said case are completely different and they are not applicable to the case on hand.

16. The learned advocate for the respondent, during his course of argument, has also submitted that if the court is inclined to allow the petition, the delay caused by the petitioner/plaintiff in representing the plaint should not be taken into account for calculating interest, if ultimately the plaintiff succeeds in the suit. I see some force and reasonableness in the said submission and therefore, it is hereby ordered that ultimately if the petitioner/plaintiff succeeds in the suit, the delay of 457 days caused by the plaintiff in representing the plaint shall not be taken into account for the calculation of interest.

17. In the result, the CRP is allowed with the above said observations and the trial court is directed to take up the plaint on file, if it is otherwise in order, and proceed further, in accordance with law. 28.1.2002 Index: Yes/No srcm

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Assistant Registrar

Sub Assistant Registrar

To:

1.The Principal District Munsif, Arni

srcm

K.GNANAPRAKASAM, J.

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